REMARKS

Applicants respectfully submit that all the claims presently on file are in condition for allowance, which action is earnestly solicited.

THE DRAWINGS

The drawings were objected for failing to comply with 37 CFR 1.84(p)(5). With respect to reference numeral 86 at paragraph [0030] line 20, this reference numeral has now been deleted, rendering the rejection moot and the drawings compliant with 37 CFR 1.84(p)(5).

THE SPECIFICATION

The specification has been objected to, for containing certain informalities. The specification has now been amended to address these informalities, without adding new matter.

THE CLAIMS

CLAIM OBJECTION

Claim 7 was objected to, for containing an informality. Claim 7 has been amended in satisfaction of 35 USC 112.

CLAIMS REJECTION UNDER 35 U.S.C. 103

A. The Rejections

Claims 1, 2, 4, 6, 7, 8, 9 and 10 were rejected under 35 U.S.C. 103(a) as being unpatentable over Moraine et al. (U.S. Patent No. 5,779,031), hereinafter referred to as "Moraine," in view of Baumgardner (U.S. Patent No. 4,643,302), hereinafter referred to as "Baumgardner," and LaBianca et al. (U.S. Patent No. 4,733,773), hereinafter referred to as "LaBianca."

Claim 5 was rejected under 35 U.S.C. 103(a) as being unpatentable over Moraine et al. (U.S. Patent No. 5,779,031), hereinafter referred to as "Moraine," in view of Baumgardner (U.S. Patent No. 4,643,302), hereinafter referred to as "Baumgardner," and LaBianca et al. (U.S. Patent No. 4,733,773), hereinafter referred to as "LaBianca," as applied to claims 1, 2, 4, 6, 7, 8, 9 and 10 above and further in view of Holsted (U.S. Patent No. 5,176,465), hereinafter referred to as "Holsted."

Claims 3, 11, 12, 13, 14, 15, 16, and 17 were rejected under 35 U.S.C. 103(a) as being unpatentable over Moraine et al. (U.S. Patent No. 5,779,031), hereinafter referred to as "Moraine," in view of Baumgardner (U.S. Patent No. 4,643,302), hereinafter referred to as "Baumgardner," and LaBianca et al. (U.S. Patent No. 4,733,773), hereinafter referred to as "LaBianca," as applied to claims 1, 2, 4, 6, 7, 8, 9 and 10 above and further in view of Moore et al. (U.S. Patent No. 3,486,451), hereinafter referred to as "Moore."

Claim 18 was rejected under 35 U.S.C. 103(a) as being unpatentable over Moraine et al. (U.S. Patent No. 5,779,031), hereinafter referred to as

"Moraine," in view of Baumgardner (U.S. Patent No. 4,643,302), hereinafter referred to as "Baumgardner," LaBianca et al. (U.S. Patent No. 4,733,773), hereinafter referred to as "LaBianca," and Moore et al. (U.S. Patent No. 3,486,451), hereinafter referred to as "Moore," as applied to claims 1, 3, 11, 12, 13, 14, 15, 16 and 17 above and further in view of Holsted (U.S. Patent No. 5,176,465), hereinafter referred to as "Holsted."

Applicants respectfully traverse these rejections and submit that none of the cited references discloses the elements and features of the claims on file, whether these references are considered individually or in combination with each other. To this end, Applicants respectfully submit the following arguments:

B. Legal Standards for Obviousness

The following legal authorities set the general legal standards in support of Applicants' position of non-obviousness, with emphasis added for added clarity:

- MPEP §2143.03, "All Claim Limitations Must Be Taught or Suggested: To establish prima facie obviousness of a claimed invention, **all the claim limitations must be taught or suggested by the prior art**. In re Royka, 490 F.2d 981, 180 USPQ 580 (CCPA 1974). "**All words in a claim must be considered** in judging the patentability of that claim against the prior art." In re Wilson, 424 F.2d 1382, 1385, 165 USPQ 494, 496 (CCPA 1970). If an independent claim is nonobvious under 35 U.S.C. 103, then any claim depending therefrom is nonobvious. In re Fine, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988)."

- MPEP §2143.01, "The Prior Art Must Suggest The Desirability Of The Claimed Invention: There are three possible sources for a motivation to combine references: the nature of the problem to be solved, the teachings of the prior art, and the knowledge of persons of ordinary skill in the art." In re Rouffet, 149 F.3d 1350, 1357, 47 USPQ2d 1453, 1457-58 (Fed. Cir. 1998) (**The combination of the references taught every**

element of the claimed invention, however without a motivation to combine, a rejection based on a prima facie case of obvious was held improper.). The level of skill in the art cannot be relied upon to provide the suggestion to combine references. Al-Site Corp. v. VSI Int'l Inc., 174 F.3d 1308, 50 USPQ2d 1161 (Fed. Cir. 1999).

- "**Obviousness cannot be established** by combining the teachings of the prior art to produce the claimed invention, **absent some teaching or suggestion** supporting the combination." *In re Fine, 837 F.2d at 1075, 5 USPQ2d at 1598* (citing *ACS Hosp. Sys. v. Montefiore Hosp., 732 F.2d 1572, 1577, 221 USPQ 929, 933 (Fed. Cir. 1984)).* **What a reference teaches** and whether it teaches toward or **away from the claimed invention** are questions of fact. See *Raytheon Co. v. Roper Corp., 724 F.2d 951, 960-61, 220 USPQ 592, 599-600 (Fed. Cir. 1983),* cert. denied, *469 U.S. 835, 83 L. Ed. 2d 69, 105 S. Ct. 127 (1984).* "

- "When a rejection depends on a combination of prior art references, there must be **some teaching, suggestion, or motivation** to combine the references. See *In re Geiger*, 815 F.2d 686, 688, 2 USPQ2d 1276, 1278 (Fed. Cir. 1987)." Obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention **where there is some teaching, suggestion, or motivation** to do so found either explicitly or implicitly in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See MPEP 2143.01; In re Kotzab, 217 F.3d 1365, 1370, 55 USPQ2d 1313, 1317 (Fed. Cir. 2000); In re Fine, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988); and In re Jones, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992).

- "With respect to core factual findings in a determination of patentability, however, the **Board cannot simply reach conclusions based on its own understanding or experience** -- or on its assessment of what would be basic knowledge or common sense. **Rather, the Board must point to some concrete evidence in the record** in support of these findings." See In re Zurko, 258 F.3d 1379 (Fed. Cir. 2001).

- "We have noted that **evidence of a suggestion, teaching, or motivation to combine** may flow from the prior art references themselves, the knowledge of one of ordinary skill in the art, or, in some cases, from the nature of the problem to be solved, see Pro-Mold & Tool Co. v. Great Lakes Plastics, Inc., 75 F.3d 1568, 1573, 37 USPQ2d 1626, 1630 (Fed. Cir. 1996), Para-Ordinance Mfg. v. SGS Imports Intern., Inc., 73 F.3d 1085, 1088, 37 USPQ2d 1237, 1240 (Fed. Cir. 1995), although "the suggestion more often comes from the teachings of the pertinent

references," Rouffet, 149 F.3d at 1355, 47 USPQ2d at 1456. The range of sources available, however, does not diminish the requirement for actual evidence. That is, **the showing must be clear and particular**. See, e.g., C.R. Bard, 157 F.3d at 1352, 48 USPQ2d at 1232. **Broad conclusory statements regarding the teaching of multiple references, standing alone, are not "evidence."** E.g., McElmurry v. Arkansas Power & Light Co., 995 F.2d 1576, 1578, 27 USPQ2d 1129, 1131 (Fed. Cir. 1993) ("Mere denials and conclusory statements, however, are not sufficient to establish a genuine issue of material fact."); In re Sichert, 566 F.2d 1154, 1164, 196 USPQ 209, 217 (CCPA 1977)." See In re Dembiczak, 175 F. 3d 994 (Fed. Cir. 1999).

- "To prevent the use of hindsight based on the invention to defeat patentability of the invention, **this court requires the examiner to show a motivation to combine the references** that create the case of obviousness. In other words, **the examiner must show reasons** that the skilled artisan, confronted with the same problems as the inventor and with no knowledge of the claimed invention, would select the elements from the cited prior art references **for combination in the manner claimed**." See In re Rouffet, 149, F.3d 1350 (Fed. Cir. 1998).

- The mere fact that references can be combined or modified does not render the resultant combination obvious **unless the prior art also suggests the desirability of the combination**. In re Mills, 916 F.2d 680, 16 USPQ2d 1430 (Fed. Cir. 1990). Although a prior art device "may be capable of being modified to run the way the apparatus is claimed, **there must be a suggestion or motivation in the reference** to do so." 916 F.2d at 682, 16 USPQ2d at 1432.). See also In re Fritch, 972 F.2d 1260, 23 USPQ2d 1780 (Fed. Cir. 1992) (flexible landscape edging device which is conformable to a ground surface of varying slope not suggested by combination of prior art references).

- If the **proposed modification would render the prior art invention being modified unsatisfactory** for its intended purpose, then there is no suggestion or motivation to make the proposed modification. In re Gordon, 733 F.2d 900, 221 USPQ 1125 (Fed. Cir. 1984).

C. Brief Summary of the Present Invention

Prior to presenting substantive arguments in favor of the allowability of the claims on file, it might be desirable to summarize the present invention in view of the problem it addresses.

Prior to the advent of the present invention, conventional packaging systems were heavy and would generally require two persons to carry each system even for a short distance. The present invention facilitates the handling of the packaging systems.

To this end, the present invention comprises a packaging system for a single ammunition that includes a cylindrical metal container and a cap therefore. A locking mechanism locks the cap to the top end of the container and a guiding mechanism guides the cap onto the top end of the container before the locking mechanism is locked to assure proper alignment. A plurality of impact rings are located laterally about the container and the cap to provide impact protection therefore. A stacking mechanism for each container allows a plurality of the containers to be securely stacked adjacent one another. The stacking mechanism includes a first top member and a second top member located adjacent the top ring and located 180° from one another about the cap such that the first top member of one cap interlocks with the second top member of an adjacent cap, and a similar arrangement on the bottom ring of the container.

D. Application of the Obviousness Standards

D.1. With regard to claims 1, 2, 4, and 6 - 10, neither Moraine, Baumgardner, nor LaBianca describes the invention as a whole. The hypothetical combination of Moraine, Baumgardner, and LaBianca does not produce the same or similar product as in the claims.

The present system includes impact rings of generally rounded octagonal shape and a **locking mechanism** that locks a cap onto a container. The locking mechanism is preferably a **toggle latch**, which is further preferably an over-center type so that once latch is closed the latch is **biased to stay in the closed position**. The toggle latch is substantially **contained within the profile of the upper ring** so that the stacking of a plurality of adjacent packaging systems can be easily effected.

The latch includes a lever portion having a movable V (or U)-shaped claw which is attached to upper ring, and a hook provided on a cylindrical section of the cap on which the claw engages or hooks. The l**atch of the locking mechanism also includes a tamper evident member** such that after an initial locking of toggle latch it will be evident if toggle latch has been opened and hence if cap has been previously removed. Tamper evident member is typically **a looped wire** which is suitably sealed after passing through some hole portion of latch.

The present system also describes a **handle** attached to the cylindrical container which **fits laterally within a longitudinal profile of the impact rings**, and a removable and adjustable **shoulder strap** that **attaches to the container bottom ring and the cap top ring**.

Moraine generally describes a container for large caliber munitions of the type formed of an outer envelope closed by a cap. The container has an inner envelope demarcating means to prevent the translation of the projectile of the munition with respect to a case enclosing the munition, load and locking mechanism applied to the base of the munition, the locking mechanism ensuring immobilization along the three axes of the munition in the inner envelope, and a mechanism to immobilize the inner envelope along the three aforementioned axes with respect to the outer envelope.

Moraine does not provide a teaching or suggestion for a package that is made of **metal**, a locking mechanism that is made of **plug and notch** to lock the cap to the top end, a **stacking mechanism** for a multitude of assembled containers and caps. **The present invention is structurally stronger, more stable locking and stackable than Moraine's**.

Baumgardner generally describes **a container for elongated playing devices and associated game items**. It provides protection during storage, handling, and shipping by freight carriers against damage and it offers resistance to theft. Principal parts of the container are made of a plastic material. Its cavity is formed in one or more standardized tubular extrusions to which molded end caps are affixed. Accessories provide for hand and shoulder carrying and lockable hardware secures the cavity. Access to the container cavity is by removal of lockable end caps and in certain embodiments by separation at the unions between two or more tubular sections. The manufacture of the container is adaptable to the requirements of a multiplicity of sports and games.

Baumgardner generally describes (FIGS. 8 and 9) draw catches 19 that are used to removably secure the end caps 12 to the tubular section 11. A draw catch includes two separable portions, a manually operable portion 19' which has a **movable extension for fitting over a fixed portion 19" by which the portions are drawn together. Means are provided for locking the draw catch in its closed position.**

Baumgardner also generally describes, in FIG. 12, two outward tubular sections, each having luggage type grips 25, for hand carrying by two cooperating persons.

However, Baumgardner does not describe a locking mechanism with a **toggle latch**, which is **biased to stay in the closed position**, wherein the toggle latch is substantially **contained within the profile of upper ring,** so that the stacking of a plurality of adjacent packaging systems can be easily effected. The latch includes a lever portion having a movable V (or U) shaped claw which is attached to upper ring, and a hook provided on cylindrical section of cap which the claw engages or hooks on. **The locking mechanism in the present invention is more stable in the locked position and facilitates stacking than the unbiased and protruding lock of Baumgardner.**

Baumgardner does not describe a handle attached to said cylindrical container **which fits laterally within a longitudinal profile of said impact rings**, and a removable and adjustable **shoulder strap** which **attaches to the container bottom ring and the cap top ring.**

LaBianca generally describes a container system for shells comprising an elongate tubular housing defining a chamber having an open end

and a closed end with a projectile-receiving seat at the closed end. A projectile carrier encircles the base portion of a container-received projectile and extends forwardly therefrom through a projectile-surrounding support. The chamber, immediately outward of the projectile, receives a projectile case with the open end of the case inwardly directed and closed by a removable plug which presents a rearwardly opening configuration receiving the ogive of the projectile. The container system, at the open discharge end of the housing, includes a carrier surrounding the case base.

All the components are closed within the chamber by a screw cap which in turn incorporates one or more viewing windows displaying indicia designating the nature of the contents of the container. The cap indicia is varied by rotation of an indicia ring accessible only from the interior of the cap prior to a mounting of the cap. The housing is provided with longitudinally spaced stacking blocks presenting planar edge surfaces with interlocking lugs and recesses. Reinforcing ribs are also integrally molded longitudinally along the length of the housing.

LaBianca generally describes, in FIGS. 1 and 11, four rectangular impact rings or blocks. Each block 44, 46 and 48 includes a planar top wall 56 and a planar bottom wall 58 that defines flat stacking surfaces interrupted solely by a pair of integrally molded **vertically projecting lugs 60 on each top wall 56 and lug receiving recesses 62 in the bottom walls 58**. It is specifically intended that the projecting lugs 60 be upwardly directed from the upper walls 56 whereby the corresponding bottom walls 62 can be maintained planar for positioning on pallets and the like. Particular attention is directed to FIG. 11 for the proposed stacking arrangement of the containers. It will also be appreciated that the outer

and inner walls 50 and 52 of the stacking blocks are of equal size and present smooth side faces for compact abutment against the blocks of adjoining containers within a stack. The utilization of spaced walls, interconnected by rigidifying webs 54, is particularly significant in providing for substantial strength with minimal additional weight.

LaBianca generally describes in FIG. 13, **the exposed portion of the cap** with a plurality of apertured lugs 138 that are integrally formed with the cap skirt 134 and that project outwardly at spaced points about the open end of the skirt for the selective reception of **a sealing wire** therethrough and through the corresponding apertures 66 in the webs 64, between the plate 40 and front wall 50 of the adjacent stacking block 44. Such wire seals are particularly desired **to preclude unauthorized access to the containers**. and provide a **tamper-evident** means for immediately visually indicating possible unauthorized access.

LaBianca, in FIG. 1, does not describe a plurality of **impact rings** located about the container and the cap, wherein the rings **extend laterally beyond the container and the cap** to provide impact protection for said container and the cap; and wherein the plurality of rings include a **container bottom ring adjacent the bottom end** of the container, a **cap top ring adjacent top end of the cap and a ring containing a locking mechanism with a tamper-evident member in the profile of the ring at the top of the container.**

In addition and as **illustrated in FIG. 1, LaBianca does not describe a stacking mechanism** including a stacking mechanism that comprises plugs and lateral holes whereby a plurality of said containers are securely stacked adjacent one another, said stacking mechanism including a first

top member and a second top member located adjacent said cap top ring of said cap and located 180°from one another about said cap such that said first top member of one said cap interlocks with the second top member of an adjacent said cap by means of a portion of a plug in a lateral hole; and a first bottom member and a second bottom member located adjacent said bottom end of said container and located 180°from one another about said container such that said first bottom member of one said container interlocks with the second bottom member of an adjacent said container by means of the portion of the plug in the lateral hole.

The container bottom ring adjacent the bottom end of container and **the cap top ring adjacent top end of cap provide protection at both longitudinal ends of the container in contrast to LaBianca which does not protect the longitudinal end of the cap. The stacking mechanism of plug in hole in the present invention is easier to align and operate than the mechanism in LaBianca**. In the present invention the **ring containing a locking mechanism with a tamper-evident member in the profile of the ring at the top of the container** is more reliable against accidental cut in contrast to LaBianca which has the tamper-evident member in the portion of the cap that is exposed and not part of a lock**.**

The **hypothetical combination of Moraine, Baumgardner and LaBianca** would include a **metal container** for large caliber munitions of the type formed of an outer envelope closed by a cap. The container has an inner envelope demarcating means to prevent the translation of the projectile of the munition with respect to a case enclosing the munition, load and locking mechanism applied to the base of the munition, the locking mechanism ensuring immobilization along the three axes of the munition

in the inner envelope, and a mechanism to immobilize the inner envelope along the three aforementioned axes with respect to the outer envelope. A draw catch in the **locking mechanism** consists of two separable portions, a manually operable portion which has a **movable extension for fitting over a fixed portion by which the portions are drawn together.** Means are provided for locking the draw catch in its closed position. **Impact rings** of round **octagonal shape** on the container include a pair of integrally molded **vertically projecting lugs on each top wall and lug receiving recesses in the bottom walls for stacking.**

As a result, contrary to the present invention, the hypothetical combination of Moraine, Baumgardner and LaBianca does not disclose a single ammunition container that includes plurality of rings, preferably at least four impact rings, including a container bottom ring adjacent the bottom end of said container, a cap top ring adjacent top end of said cap and a ring at the top of the container containing part of the guiding mechanism with a tamper-evident member in its profile; locking mechanism with bias in the closed position and stacking mechanism utilizing plug in hole, a handle which fits laterally within a longitudinal profile of impact rings, and a removable and adjustable shoulder strap which attaches to said container bottom ring and said cap top ring. Consequently, the hypothetical combination that includes impact rings, unbiased locking mechanism and stacking mechanism of lugs and receiving recesses, a handle that does not fit laterally within a longitudinal profile of impact rings, and shoulder strap not attached to a ring results in **a locking mechanism and a tamper-evident member not contained in the profile of a ring and would interfere with stacking, less stable locking between the cap and container, less easy to align stacking mechanism,**

exposed handle that presents an obstacle to stacking, and low lifting capability because the shoulder strap is not attached to a ring.

Consequently the hypothetical combination of **Moraine, Baumgardner and LaBianca** does not produce the same or similar product as the present invention, and claim 1 and the claims dependent thereon are not obvious in view of **Moraine, Baumgardner and LaBianca**, whether considered individually or in combination with each other.

D.2. With regard to claim 5, neither Moraine, Baumgardner, LaBianca nor Holsted describes the invention as a whole. The hypothetical combination of Moraine, Baumgardner, LaBianca and Holsted does not produce the same or similar product as in the claims.

Holsted generally describes means for arranging discrete parts in a vertical stack to save space, and a device of this invention comprises two coacting parts which detachably interlock. A male plug member is secured by adhesive to an upper component and a female member is secured to a separate lower component so that the two, when aligned, interlock. The structural details are such that the two may be locked together if desired.

Holsted does not describe the present invention as a whole because Holsted does not describe a stacking mechanism of a portion of a plug in a lateral hole, with the plug secured to one component and the lateral hole secured to a second component. The present invention provides for easier access and alignment in contrast to the vertical male plug in a female member locking mechanism of Holsted.

As a result, the hypothetical combination of Moraine, Baumgardner, LaBianca nor Holsted would include a vertical male plug that vertically interlocks with a female member.

Consequently, Holsted does not describe the invention as a whole, the hypothetical combination of Moraine, Baumgardner, LaBianca and Holsted does not produce the same or similar product as the present invention, and the cited claim is not obvious in view of Moraine, Baumgardner, LaBianca, and Holsted, whether considered individually or in combination with each other.

D.3. With regard to claims 3 and 11 - 17, neither Moraine, Baumgardner, LaBianca, nor Moore describes the invention as a whole. The hypothetical combination of Moraine, LaBianca, and Moore does not produce the same or similar product as in the claims.

Applicants incorporate by reference the arguments made previously in connection with the allowability of the claims. In addition, the **present invention discloses a coating of fire-retardant paint is provided on the cylindrical ammunition container and the cap.**

Moore generally describes an **electrically fired missile** and powder-retaining element materials may be made more accident resistant and/or waterproof by an enveloping coat of fire-resistant material. Moore does not provide any teaching, suggestion nor motivation to coat an ammunition container and cap with a fire-retardant paint. Moreover, a hypothetical combination of Moraine, Baumgardner, LaBrianca and Moore has the same features as the hypothetical combination of Moraine, Baumgardner and LaBrianca already described above and

does not have any fire-retardant paint. The reason is that Moore does not provide any teaching, suggestion nor motivation to coat an ammunition container and cap with a fire-retardant paint.

Consequently, the hypothetical combination of Moraine, Baumgardner, LaBianca and Moore does not produce the same or similar product as the present invention, and the cited claims are not obvious in view of Moraine, Baumgardner, LaBianca nor Moore, whether considered individually or in combination with each other.

D.4. With regard to claim 18, neither Moraine, Baumgardner, LaBianca, Moore, nor Holsted describes the invention as a whole. The hypothetical combination of Moraine, Baumgardner, LaBianca, Moore, and Holsted does not produce the same or similar product as in the claims.

Applicants incorporate by reference the arguments made previously in connection with the allowability of the claims.

Holsted generally describes means for arranging discrete parts in a vertical stack to save space, and a device of this invention comprises two coacting parts which detachably interlock. A male plug member is secured by adhesive to an upper component and a female member is secured to a separate lower component so that the two, when aligned, interlock. The structural details are such that the two may be locked together if desired.

Holsted does not describe the present invention as a whole because Holsted does not describe a stacking mechanism of a portion of a plug in a lateral hole, with the plug secured to one component and the lateral

hole secured to a second component. The present invention provides for easier access and alignment in contrast to the vertical male plug in a female member locking mechanism of Holsted.

A hypothetical combination of Moraine, Baumgardner, LaBianca Moore and Holsted would include a vertical male plug that vertically interlocks with a female member.

Consequently, Holsted does not describe the invention as a whole, the hypothetical combination of Moraine, Baumgardner, LaBianca, Moore and Holsted does not produce the same or similar product as the present invention, and the cited claim is not obvious in view of Moraine, Baumgardner, LaBianca, Moore, and Holsted, whether considered individually or in combination with each other.

CONCLUSION

All the claims presently on file in the present application are in condition for immediate allowance, and such action is respectfully requested. If it is felt for any reason that direct communication would serve to advance prosecution of this case to finality, the Examiner is invited to call the undersigned at the below-listed telephone number.

Respectfully submitted,

/Michael C. Sachs/

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